IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 602 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMANBHAI @ LAKHAJI BUDHAJI THAKORE

Versus

DY POLICE COMMISSIONER (ZONE-V)

Appearance:

1. Special Criminal Application No. 602 of 2001

MR MAHENDRA K PATEL for Petitioner No. 1

MR K.T. DAVE, ADDL. PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/10/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constituion, petitioner has challenged the order dated October 31, 2000 at Annexure "C" to the petition, passed

by the externing authority i.e. Deputy Commissioner of Police, Zone V, Ahmedabad City, under Section 56(b) of the Bombay Police Act, (for short "the Act"), by which he has externed the petitioner for a period of two years from five districts i.e. Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana and also the order dated March 9, 2001 at Annexure "D", passed by the appellate authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

2. The petitioner was served with a show cause notice under Sec. 59 of the Act, in which several allegations were made against him to the effect that he is a strong headed, quarrelsome and aggresive person who has no fear of law and order and with the help of his accomplice he purchased articles from the trader without making payment thereof and if they demand the payment, petitioner gave threat to kill them. It is further alleged that petitioner demanded money for purchasing liquor from the people and if they oppose, he gave threat by showing the knife to them. It is alleged that he was insisting for storage of the liquor in the house of the people of Dharu Society area and if they oppose, petitioner beat them and people are afraid of filing complaint and the activities are detrimental to the maintenance of public law and order. Therefore, by issuing the show cause notice the petitioner was called upon to show cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgement.

3. The petitioner replied to the show cause notice. The externing authority after considering the material on record passed the impugned order of externment dated October 31, 2000, in exercise of the powers conferred under Section 56(b) of the Act, by externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal before the appellate authority under Sec. 60 of the Act, which was dismissed by the appellate authority vide order dated March 9, 2001, which has given rise to the present petition.

5. Mr. Mahendra Patel, learned Counsel for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices like non-application of mind, and

delay in passing the order from the date of issuance of the show cause notice. On the aforesaid ground he urged that the order of externment passed by the externing authority and the order passed by the appellate authority confirming the order of externment both may be quashed and set aside.

6. Shri K.T Dave, learned APP does not dispute the factual aspect of delay in passing the order of externment from the date of issuance of the show cause notice. He therefore urged to pass appropriate order.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the order passed by the externing authority and the order passed by the appellate authority and other papers annexed to the petition.

8. The only point which requires to be considered is regarding delay in passing the order of externment after issuance of the show cause notice. On perusal of the relevant papers annexed with the petition, it is seen that the show cause notice calling upon the petitioner as to why he should not be externed on the ground stated in the show cause notice was issued on May 20, 2000, whereas order of externment came to be passed on October 31, 2000. Therefore, it can be said that the order was passed after a period of more than 5 months. It is nowhere explained by the externing authority why there is a delay of over five months in passing the said order. The delay has not been explained, which renders the impugned orders invalid.

9. In the case of Santosh Ramprasad Sharma Vs. Deputy Commissioner of Police, reported in 1992 (2) GLH 457 a Division Bench of this Court has held that when there is a delay in passing the order of externment from the date of issuance of notice which is not explained, the benefit should go to the externee. It was held that in externing a person which is in the public interest, the authorities are expected to act promptly and if they delay the matter, the same will spell out that there is no urgent need of externment. The externment orders curtail the freedom of movement of person concerned and therefore any latches on the part of the authority concerned cannot be countenanced and the benefit will go to the party concerned and on that score the externee will be entitled to the benefit of quashing such an order of externment.

10. It is a settled proposition of law that under Section 59 of the Act, action should be followed as expeditiously as possible and only a short notice must be given, immediately thereafter the witnesses are to be examined and if there is a long delay in passing the order of externment after issuance of show cause notice, the externing authority cannot reasonably come to the conclusion that the moment externment order is passed the externee is causing or likely to cause or involve in such activities and therefore on this sole ground the order of externment suffers from vice of non-application of mind and requires to be quashed and set aside by allowing the petition.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of externment dated October 31, 2000 at Annexure "C" and order dated March 9, 2001 at Annexure "D" passed by the appellate authority both are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)

*/Mohandas